

# UNOFFICIAL COPY

This instrument prepared by  
and please return to:



Doc#: 0916218090 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 06/11/2009 03:52 PM Pg: 1 of 22

Polsinelli Shughart PC  
180 North Stetson Avenue, Suite 4525  
Chicago, Illinois 60601-6733  
Attention: Kimberly K. Enders, Esq.

112008348-1

Parcel No. 1:

P.I.N.: 13-01-218-032-0000  
COMMONLY KNOWN AS: 6100-04 N. Talman/2634-44 W. Glenlake, Chicago, Illinois

Parcel No. 2:

P.I.N.: 16-25-310-031-0000  
COMMONLY KNOWN AS: 831 Burton Avenue, Highland Park, Illinois 60035

Parcel No. 3:

P.I.N.: 09-34-202-014-0000  
COMMONLY KNOWN AS: 2016 Des Plaines Ave., Park Ridge, Illinois 60068

## FIFTH LOAN MODIFICATION AGREEMENT

This instrument is a Fifth Loan Modification Agreement ("Fifth Modification") among First Chicago Bank & Trust, as successor to Labe Bank, an Illinois banking corporation ("Lender"), Kosa Development, LLC, an Illinois limited liability company, an Illinois limited liability company and the owner of Parcel No. 1 ("Borrower"), Zivko Kovacevic and Radmila Kovacevic as owners of Parcel No. 2, Vladan Savic and Biljana Savic as owners of Parcel No. 3 (collectively, with Borrower, "Mortgagors"), and Zivko Kovacevic and Vladan Savic (collectively "Guarantors").

# UNOFFICIAL COPY

## RECITALS:

A. Borrower holds fee simple title to the real estate commonly known as 6100-04 N. Talman/2634-44 W. Glenlake, Chicago, Illinois, which is legally described on **Exhibit A** attached hereto ("Parcel No. 1"). Guarantors are members of Borrower.

B. On September 22, 2005, Lender granted a loan to Borrower in the amount of Two Million Five Hundred Twenty-Five Thousand Eight Hundred Fifty (\$2,525,850.00) Dollars ("Loan"), which is evidenced by a Promissory Note in the principal amount of Two Million Five Hundred Twenty-Five Thousand Eight Hundred Fifty (\$2,525,850.00) Dollars ("Note"). Concurrently therewith, Borrower, Guarantors and other parties executed and delivered to Lender the following documents (collectively "Security Documents"):

1. a Construction Loan Agreement;
2. a Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage No. 1") executed by Borrower and covering Parcel No. 1, which Mortgage No. 1 was recorded with the Cook County, Illinois Recorder of Deeds on October 12, 2005 as Document No. 0528535205;
3. a Junior Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage No. 2") executed by Zivko Kovacevic and Radmila Kovacevic and covering property commonly known as 831 Burton Avenue, Highland Park, Illinois and legally described on **Exhibit B** attached hereto ("Parcel No. 2"), which Mortgage No. 2 was recorded with the Lake County, Illinois Recorder of Deeds on November 2, 2006 as Document No. 6085596;
4. a Junior Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing ("Mortgage No. 3") executed by Vladan Savic and Biljana Savic and

# UNOFFICIAL COPY

covering property commonly known as 2016 Des Plaines, Park Ridge, Illinois and legally described on **Exhibit C** attached hereto ("Parcel No. 3"), which Mortgage No. 3 was recorded with the Cook County, Illinois Recorder of Deeds on October 12, 2005 as Document No. 0528535206;

5. a Guaranty of Note, Mortgage, Loan Agreement and Other Undertakings executed by Guarantors ("Guaranty");

6. a Letter Agreement regarding waiver of tax and insurance escrows executed by Borrower and Lender;

7. a UCC Financing Statement authorized by Borrower and filed with the Secretary of State of Illinois;

8. an Environmental, ADA and ERISA Indemnification Agreement executed by Borrower and Guarantors;

9. an Assignment of Project Documents executed by Borrower;

10. an Assignment and Pledge of Earnest Money and Real Estate Sale Contracts executed by Borrower;

11. a Subordination Agreement executed by Laurmeg, LLC;

12. an organizational resolution executed by Borrower; and

13. a Construction Loan Escrow Trust and Disbursing Agreement ("Construction Escrow") executed by Borrower, Lender, Borrower's general contractor and title insurer.

C. As of September 22, 2006, Borrower, Lender and Guarantors entered into a Loan Modification Agreement ("Modification"), pursuant to which Lender extended the maturity date of the Loan from September 22, 2006 until June 5, 2007. The Modification was recorded on October 23, 2006 with the Cook County, Illinois Recorder of Deeds as Document No.

# UNOFFICIAL COPY

0629631095, and with the Lake County, Illinois Recorder on January 26, 2007 as Document No. 6127774.

D. On June 26, 2007, to take effect as of June 5, 2007, Borrower, Lender and Guarantors entered into a Second Loan Modification Agreement ("Second Modification"), pursuant to which Lender extended the maturity date of the Loan to January 5, 2008. The Second Modification was recorded on July 9, 2007 with the Lake County, Illinois Recorder as Document No. 6208705, and with the Cook County, Illinois Recorder of Deeds on August 2, 2007 as Document No. 0721444030.

E. On February 26, 2008 to take effect as of January 5, 2008, Borrower, Lender and Guarantors entered into a Third Loan Modification Agreement ("Third Modification"), pursuant to which Lender extended the maturity date of the Loan to June 5, 2008. The Third Modification was recorded on April 3, 2008 with the Lake County, Illinois Recorder as Document No. 6327747, and with the Cook County, Illinois Recorder of Deeds on March 7, 2008 as Document No. 0806744006.

F. On July 10, 2008 to take effect as of June 5, 2008, Borrower, Lender and Guarantors entered into a Fourth Loan Modification Agreement ("Fourth Modification"), pursuant to which Lender extended the maturity date of the Loan to November 1, 2008. The Fourth Modification was recorded with the Cook County, Illinois Recorder of Deeds on July 21, 2008 as Document No. 0820331042 and with the Lake County, Illinois Recorder on July 29, 2008 as Document No. 6375302.

G. On November 1, 2008, Borrower, Lender and Guarantors entered into a Change In Terms Agreement ("Change In Terms Agreement"), pursuant to which Lender extended the maturity date of the Loan to March 5, 2009.

# UNOFFICIAL COPY

H. Borrower has now requested Lender to extend the maturity date of the Loan from March 5, 2009 until September 5, 2009. Lender is agreeable to this request subject to the covenants, conditions and restrictions contained herein, including but not limited to a change in the rate of interest charged on the Loan.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the parties agree as follows:

1. Note is hereby modified and amended in its entirety by the Revised Promissory Note in the amount of Three Hundred Thirty-One Thousand Eighty-Four (\$331,084.00) Dollars, executed concurrently herewith, a copy of which is attached hereto as **Exhibit D** ("Revised Note"), which Revised Note provides that the Loan must be paid in full by September 5, 2009. The Revised Note evidences the outstanding principal balance of the Loan. The Security Documents are hereby modified and amended to secure the Revised Note and all references are modified and amended to refer to Revised Note in place of the Note. All amounts presently outstanding on the Note shall be deemed outstanding on Revised Note. All interest charged on and all payments made on the Note previously are unchanged.

2. The Security Documents are hereby modified and amended to secure the Note as hereby modified and all references to the Note in the Security Documents are modified and amended to refer to the Note as hereby modified. All interest charged on and all payments made on the Note previously are unchanged.

3. This Fifth Modification shall be effective upon Lender's receipt of this Fifth Modification executed by the parties hereto and the following documents and items:

(a) the Revised Note in the amount of \$331,084.00;

# UNOFFICIAL COPY

(b) a Revised Guaranty of Note, Mortgage, Loan Agreement and Other Undertakings (“Revised Guaranty”);

(c) a consent to this Sixth Modification executed by Laurmeg, LLC in the form attached hereto (“Consent”);

(d) an Organizational Resolution of Borrower;

(e) a Certification of No Change to Organizational Documents executed by Borrower’s managing member;

(f) an LLC File Detail Report printout from the Illinois Secretary of State’s website showing the good standing status of Borrower;

(g) payment of the fees and costs set forth in Section 7 hereof;

(h) evidence that all real estate taxes have been paid;

(i) evidence that insurance required by the Mortgage has been obtained; and

(j) a date down endorsement to Lender’s loan title insurance policy.

4. This Fifth Modification shall constitute an amendment of the Security Documents and wherever in said instruments or in any other instrument evidencing or securing the indebtedness evidenced by the Note (“Loan Documents”) reference is made to the Loan Documents aforesaid, such reference shall be deemed a reference to such Loan Documents as hereby modified and amended. All other provisions of the Loan Documents remain unchanged. Nothing herein contained shall in any manner affect the lien or priority of the Mortgage as revised by this Fifth Modification, or the covenants, conditions and agreements therein contained or contained in the Note or the Revised Note.

5. In the event of conflict between any of the provisions of the Loan Documents and this instrument, the provisions of this instrument shall override and control.

# UNOFFICIAL COPY

6. Borrower and Guarantors hereby renew, remake and affirm the representations and warranties contained in the Loan Documents.

7. Borrower hereby agrees to pay Lender's fee in the amount of \$6,622.00, which must be paid when the Loan is paid in full, but in no event later than the Maturity Date. Borrower hereby agrees to pay all of Lender's expenses arising out of and in connection with this Fifth Modification including, but not limited to, attorneys' fees, title insurance premiums and recording fees.

8. Guarantors hereby expressly acknowledge and confirm that by executing this Fifth Modification, Lender has not waived, altered or modified Lender's rights under any of the Loan Documents to amend, extend, renew or modify or otherwise deal with the obligations of the parties hereto or any of the security given to Lender in connection therewith without the consent of Guarantors and without such action releasing, modifying, or affecting the obligations of Guarantors or affecting the security heretofore granted to Lender.

9. As an inducement to Lender to enter in this Sixth Modification, Borrower and Guarantors each acknowledge and agree that:

(a) the Lender has fully performed all of its obligations under the Loan Documents recited herein and otherwise between the parties hereto;

(b) each of Borrower and Guarantors waives and affirmatively agrees not to allege, assert or otherwise pursue any claim, defense, affirmative defense, counterclaim, cause of action, setoff or other right which any of them may have, or claim to have, as of the date hereof, against Lender, whether known or unknown, including, but not limited to, any contest of:

(c) the existence and materiality of the defaults stated herein;

# UNOFFICIAL COPY

(d) the enforceability, applicability or validity of any provision of any of the Loan Documents, except as modified by this Sixth Modification, or the enforcement or validity of the terms and provisions of this Sixth Modification;

(e) the right of Lender to demand immediate payment and performance of the obligations of Borrower and Guarantors pursuant to any of the Loan Documents or this Sixth Modification,

(f) the existence, validity, enforceability or perfection of security interests granted to Lender in any of the collateral securing any of the obligations under the Loan Documents or this Sixth Modification, whether real or personal property, tangible or intangible, or any right or other interest, now or hereafter arising;

(g) the conduct of the Lender in administering the financial arrangements between Lender and Borrower and Guarantors under any of the Loan Documents or this Sixth Modification; and

(h) any legal fees and expenses incurred by Lender and charged to Borrower and Guarantors pursuant to any of the Loan Documents.

**10. BORROWER AND GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THIS FIFTH MODIFICATION, THE CHANGE IN TERMS AGREEMENT, THE FOURTH MODIFICATION, THE THIRD MODIFICATION, THE SECOND MODIFICATION, THE MODIFICATION, MORTGAGE NO. 1, MORTGAGE NO. 2, MORTGAGE NO. 3, THE LOAN AGREEMENT, THE SECURITY DOCUMENTS, OR ANY OF THE**



# UNOFFICIAL COPY

DOCUMENTS EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH LENDER, BORROWER AND/OR GUARANTORS ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER OR GUARANTOR, OR ANY OF THEM.

11. BORROWER AND GUARANTORS HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER AND GUARANTORS HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER AND GUARANTORS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER AND GUARANTORS IRREVOCABLY CONSENT TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO BORROWER AND GUARANTORS AT THEIR ADDRESSES AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF LENDER. BORROWER AND GUARANTORS AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING, AFTER ALL APPEAL RIGHTS ARE EXHAUSTED, SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN

# UNOFFICIAL COPY

ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

BORROWER AND GUARANTORS AGREE NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST LENDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER AND GUARANTORS OR THEIR PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS; PROVIDED, HOWEVER, UNLESS LENDER IS REQUIRED BY LAW TO INSTITUTE PROCEEDINGS IN ANY OTHER JURISDICTION, LENDER SHALL FIRST INSTITUTE PROCEEDINGS IN A STATE COURT SITTING IN COOK COUNTY, ILLINOIS OR ANY FEDERAL COURT SITTING IN CHICAGO, ILLINOIS.

12. Borrower and Guarantors warrant to Lender that neither Borrower nor Guarantors nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower and Guarantors covenant to Lender that if they become aware that they or any affiliate are identified on any Blocked Persons List, Borrower and Guarantors shall immediately notify Lender in writing of such information. Borrower and Guarantors further agree that in the

# UNOFFICIAL COPY

event they or any affiliate are at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Lender to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, Lender may immediately contact the Office of Foreign Assets Control and any other government agency Lender deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Lender will forbear enforcement of its rights and remedies during such time as: (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List, and (2) Lender determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of Lender and encumbering, any part of the Premises (as defined in the Mortgage) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

*Signature page follows*


# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Modification on


\_\_\_\_\_, 2009 to take effect as of March 5, 2009.


**LENDER:**

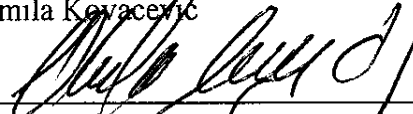
First Chicago Bank & Trust, as successor to  
Labe Bank, an Illinois banking corporation

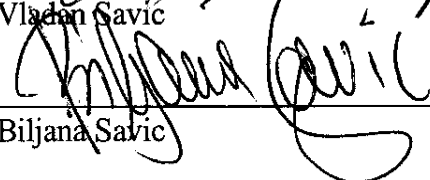
By:   
Its AVF

**MORTGAGORS:**

  
Zivko Kovacevic

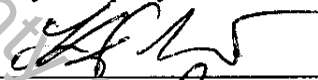
  
Radmila Kovacevic


  
Vladan Savic

  
Biljana Savic

**BORROWER:**


Kosa Development, LLC, an Illinois limited  
liability company

By:   
Zivko Kovacevic, managing member

By:   
Vladan Savic, managing member

**GUARANTORS:**

  
Vladan Savic

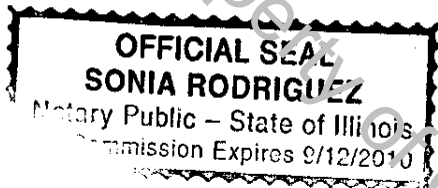
  
Zivko Kovacevic

# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
                                      )  
                                      )        SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that Alexander Durek, A.D.P. of First Chicago Bank & Trust, as successor to Labe Bank, an Illinois banking corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal April 27th, 2009.

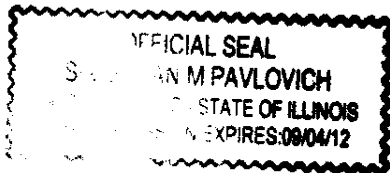


Sonia Rodriguez  
Notary Public

STATE OF ILLINOIS        )  
                                      )  
                                      )        SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Zivko Kovacevic, individually and as managing member of Kosa Development, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of such limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 5/18, 2009.



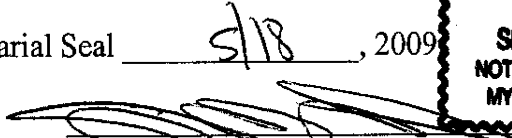
[Signature]  
Notary Public

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Vladan Savic, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 5/18, 2009


  
Notary Public



STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Biljana Savic, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 5/18/09, 2009.

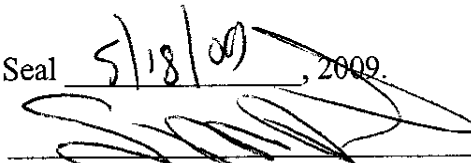
  
Notary Public

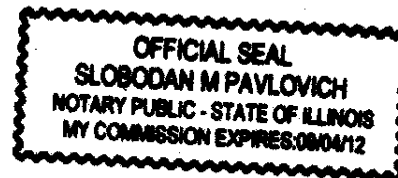


STATE OF ILLINOIS     )  
                                  )     SS  
COUNTY OF C O O K     )

The undersigned, a Notary Public in and for the State and County aforesaid, does hereby certify that Radmila Kovacevic, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal 5/18/09, 2009.

  
Notary Public



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION:

LOTS 17 AND 18 IN BLOCK 3 IN T. J. GRADY'S 4TH GREEN BRIAR ADDITION TO NORTH EDGEWATER, BEING A SUBDIVISION OF THE WEST 1/2 OF THE EAST 1/2 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 6100-04 N. Talman/2634-44 W. Glenlake, Chicago, Illinois

P.I.N.: 13-01-218-032-0000

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT B

### LEGAL DESCRIPTION:

LOT 34 IN BLOCK 1 IN FIRST ADDITION TO RAVINIA HIGHLANDS IN THE SOUTHWEST 1/4 OF SECTION 25, TOWNSHIP 34 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN AND IN THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 43 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS

COMMONLY KNOWN AS: 831 BURTON AVENUE, HIGHLAND PARK, IL 60035

P.I.N.: 16-25-310-031-0000

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT C

### LEGAL DESCRIPTION:

LOT 38 IN WILLIAM ZELOSKY'S PARK RIDGE SUBDIVISION, A SUBDIVISION OF LOT 2 IN S. GREENBAUM'S SUBDIVISION IN THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 2016 DES PLAINES AVE., PARK RIDGE, IL 60068

P.I.N.: 09-34-202-014-0000

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT D

### PROMISSORY NOTE ("Revised Note")

\$331,084.00

as of March 5, 2009

**FOR VALUE RECEIVED** the undersigned, Kosa Development, LLC, an Illinois limited liability company ("Borrower"), promises to pay to the order of First Chicago Bank & Trust, as successor to Labe Bank (said Bank and each successive owner and holder of this Note being hereinafter called "Holder"), the principal sum of Three Hundred Thirty-One Thousand Eighty-Four Dollars (\$331,084.00), or so much thereof as may from time to time be outstanding hereunder, together with interest on the balance of principal from time to time remaining unpaid, in the amounts, at the rates and on the dates hereafter set forth.

The rate of interest payable on this Note will change from time to time as hereafter provided. Monthly payments on account of this Note shall be adjusted from time to time as the rate of interest changes. Payments on account of this Note shall be made as follows:

(a) On April 5, 2009, and on the fifth day of each succeeding calendar month to and including the Maturity Date hereinafter defined, there shall be paid on account of this Note interest only at the rate of five percent (5.0%) per annum.

(b) On September 5, 2009 ("Maturity Date"), the principal balance together with all accrued interest and all other amounts due hereunder shall be paid.

(c) On the date of final payment of this Note, but in no event later than the Maturity Date, there shall be paid the amount of \$6,622.00 as Holder's fee for the Fifth Modification.

The prime rate of First Chicago Bank & Trust is currently the highest prime rate of interest published in The Wall Street Journal. If this index is no longer available, the Bank will choose a new index in compliance with applicable law and will notify Borrower of its choice. Borrower acknowledges that it is advised that said rate is not Bank's lowest or most favorable lending rate.

Interest shall be calculated on the basis of a year having 360 days and paid based on the actual days outstanding.

Payment upon this Note shall be made in lawful money of the United States at such place as the Holder of this Note may from time to time in writing appoint and in the absence of such appointment, shall be made at the offices of First Chicago Bank & Trust, 1145 North Arlington Heights Road, Itasca, Illinois 60143.

This Note may be prepaid, without premium or penalty, in whole or in part, and all accrued interest hereon shall be payable and shall be paid on the date of prepayment.

Without limiting the provisions of the succeeding paragraphs, in the event any payment of interest is not paid within ten (10) days after the date the same is due, the undersigned

# UNOFFICIAL COPY

## EXHIBIT D

promises to pay a "Late Charge" of five (5%) percent of the amount so overdue to defray the expense incident to handling any such delinquent payment or payments.

This Note is executed pursuant to a Fifth Loan Modification Agreement ("Fifth Modification") executed and delivered concurrently herewith. This Note restates and amends that certain Promissory Note in the amount of \$2,525,850.00 ("Original Note") made by Borrower on September 22, 2005 and secured by an instrument entitled "Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing" ("Mortgage No. 1") dated September 22, 2005 and recorded with the Cook County Recorder of Deeds on October 12, 2005 as Document No. 0528535205 and an instrument entitled "Junior Real Estate Mortgage, Assignment of Rents, Security Agreement and UCC Fixture Filing" ("Mortgage No. 2") dated September 22, 2005 and recorded with the Lake County Recorder of Deeds on November 2, 2006 as Document No. 6085596, executed pursuant to a Construction Loan Agreement ("Loan Agreement"), and other documents (collectively, with Mortgage No. 1, Mortgage No. 2 and the Loan Agreement, the "Security Documents"). The Original Note was further modified by a Loan Modification Agreement dated as of September 22, 2006 ("Modification") and recorded with the Cook County Recorder of Deeds on October 23, 2006 as Document No. 0629631095 and with the Lake County Recorder of Deeds on January 26, 2007 as Document No. 6127774, a Second Loan Modification Agreement dated June 26, 2007 to take effect as of June 5, 2007 ("Second Modification") and recorded with the Cook County Recorder of Deeds on August 2, 2007 as Document No. 0721444030 and with the Lake County Recorder of Deeds on July 9, 2007 as Document No. 6208705, a Third Loan Modification Agreement dated February 26, 2008 to take effect as of January 5, 2008 ("Third Modification") and recorded with the Cook County Recorder of Deeds on March 7, 2008 as Document No. 0806744006 and with the Lake County Recorder of Deeds on April 3, 2008 as Document No. 6327747, and a Fourth Loan Modification Agreement dated July 10, 2008, to take effect as of June 5, 2008 ("Fourth Modification") and recorded with the Cook County Recorder of Deeds on July 21, 2008 as Document No. 0820331042 and with the Lake County Recorder on July 29, 2008 as Document No. 6375302 and a Change In Terms Agreement dated November 1, 2008 (the Modification, Second Modification, Third Modification, Fourth Modification and Change In Terms Agreement are collectively "Modifications"). Amounts outstanding pursuant to the Original Note shall be outstanding under this Note. All interest rates applicable to and charged on the Original Note and all payments made on the Original Note are unchanged. Pursuant to the Fifth Modification, the Modifications and the Security Documents are modified to secure this Note.

At the election of the Holder hereof, without notice, the principal sum remaining unpaid hereon, together with accrued interest, shall be and become at once due and payable in the case of default in the payment of principal or interest when due in accordance with the terms hereof or upon the occurrence of any "Event of Default" under the Fifth Modification and the Security Documents.

Under the provisions of the Fifth Modification and the Security Documents, the unpaid balance hereunder may, at the option of the Holder, be accelerated and become due and payable forthwith upon the happening of certain events as set forth therein. The Fifth Modification and the Security Documents are, by this reference, incorporated herein in their entirety and notice is given of such possibility of acceleration.

# UNOFFICIAL COPY

## EXHIBIT D

The principal hereof, including each installment of principal, shall bear interest after the occurrence of an event of default, not cured within the applicable cure period, at the annual rate (herein called the "Default Rate") determined by adding three (3.0%) percentage points to the interest rate then required to be paid, as above provided, on the principal balance.

No failure on the part of Bank or any holder hereof to exercise any right or remedy hereunder, whether before or after the occurrence of an event of default, shall constitute a waiver thereof, and no waiver of any past default shall constitute a waiver of any future default or of any other default. No failure to accelerate, nor acceptance of a past-due installment, nor indulgence granted shall be construed to be a waiver of the right to insist upon prompt payment and to impose the late payment penalty and the default rate, retroactively or prospectively, or shall be deemed a waiver of any right of acceleration or any other right which Bank may have, whether by law or agreement or otherwise. None of the foregoing shall operate to release, change or effect the liability of Borrower, endorser or guarantor of this Note, and Borrower and each endorser and guarantor hereby expressly waive the benefit of any statute or rule of law or equity which would produce a result contrary to or in conflict with the foregoing.

Borrower waives notice of default, presentment, notice of dishonor, protest and notice of protest.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceeding, the undersigned promise to pay all costs incurred by Bank in connection therewith including, but not limited to, court costs, litigation expense and reasonable attorneys' fees.

Payments received on account of this Note shall be applied first to the payment of any amounts due pursuant to the next preceding paragraph, secondly to interest and Late Charges and the balance to principal.

Funds representing the proceeds of the indebtedness evidenced herein which are disbursed by Holder by mail, wire transfer or other delivery to Borrower, Escrowees or otherwise for the benefit of Borrower shall, for all purposes, be deemed outstanding hereunder and received by Borrower as of the date of such mailing, wire transfer or other delivery, and interest shall accrue and be payable upon such funds from and after the date of such mailing wire transfer or other delivery until repaid to Holder, notwithstanding the fact that such funds may not at any time have been remitted by such Escrowees to the Borrower.

**BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY THE RIGHT IT MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, MORTGAGE OR ANY OF THE OTHER OBLIGATIONS, OR THE COLLATERAL SECURED BY THE SECURITY DOCUMENTS, OR ANY AGREEMENT, EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING, IN WHICH HOLDER AND BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.**

# UNOFFICIAL COPY

## EXHIBIT D

**BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN CHICAGO, ILLINOIS OVER ANY ACTION OR PROCEEDING BASED HEREON AND BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. BORROWER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT THEY MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH BORROWER AT ITS ADDRESS AS SPECIFIED HEREIN OR OTHERWISE IN THE RECORDS OF THE HOLDER. BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.**

**BORROWER AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST HOLDER OR THE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY THEREOF, IN ANY COURT OTHER THAN THE ONE HEREINABOVE SPECIFIED. NOTHING IN THIS SECTION SHALL AFFECT THE RIGHT OF HOLDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF HOLDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTIONS.**

Borrower warrants to Holder that neither the Borrower nor any affiliate is identified in any list of known or suspected terrorists published by an United States government agency (collectively, as such lists may be amended or supplemented from time to time, referred to as the "Blocked Persons Lists") including, without limitation, (a) the annex to Executive Order 13224 issued on September 23, 2001, and (b) the Specially Designated Nationals List published by the Office of Foreign Assets Control.

Borrower covenants to Holder that if it becomes aware that it or any affiliate is identified on any Blocked Persons List, the Borrower shall immediately notify the Holder in writing of such information. Borrower further agrees that in the event it or any Affiliate is at any time identified on any Blocked Persons List, such event shall be an Event of Default, and shall entitle Holder to exercise any and all remedies provided in any Loan Document or otherwise permitted by law. In addition, the Holder may immediately contact the Office of Foreign Assets Control and any other government agency the Holder deems appropriate in order to comply with its obligations under any law, regulation, order or decree regulating or relating to terrorism and international money laundering. Upon the occurrence of such Event of Default, Holder will forbear enforcement of its rights and remedies during such time as (1) the person ("Person") identified in a Blocked Persons List is contesting in good faith by appropriate legal proceedings such Person's inclusion in a Blocked Persons List and (2) the Holder determines, in its sole and absolute discretion, that such forbearance will not adversely affect title to, the condition or value of, or any lien in favor of the Holder and encumbering, any part of the Premises (as defined in

# UNOFFICIAL COPY

## EXHIBIT D

the Mortgages) or otherwise adversely impact the ability of any Person to perform such Person's obligations under or with respect to any Loan Documents.

Time is of the essence of this Note and each provision hereof.

Kosa Development, LLC, an Illinois limited liability company

By: \_\_\_\_\_  
Zivko Kovacevic, managing member

By: \_\_\_\_\_  
Vladimir Savic, managing member

Property of Cook County Clerk's Office